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REPORT
No. 454

AMENDING SECTION 1001(f) OF THE NATIONAL DEFENSE EDUCATION ACT OF 1958

JUNE 29, 1959.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Public Welfare, submitted the following

REPORT

[To accompany S. 819]

The Committee on Labor and Public Welfare, to whom was referred the bill (S. 819) to amend the National Defense Education Act of 1958 by repealing certain provisions requiring affidavits of loyalty and allegiance, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 819 is to eliminate from the National Defense Education Act the requirement that an individual who obtains benefits under the act must execute an affidavit disclaiming affiliation or support of subversive organizations, and take a prescribed oath of allegiance to the United States.

Section 1001(f) of the National Defense Education Act, which the bill repeals, reads as follows:

> (f) No part of any funds appropriated or otherwise made available for expenditure under authority of this Act shall be used to make payments or loans to any individual unless such individual (1) has executed and filed with the Commissioner an affidavit that he does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods, and (2) has taken and subscribed to an oath or affirmation in the following form: "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic." The provisions of section 1001 of title 18, United

States Code, shall be applicable with respect to such affidavits.

The committee believes that the repeal of these requirements is not only desirable but essential if full value is to be realized from the act. It is clear that the implications and impact of section 1001(f) were not fully realized at the time the National Defense Education Act was approved by the Senate. Experience has shown it to be ineffective as a security device and harmful to the educational program.

The committee believes that section 1001(f) does not constitute an effective national security measure. It would be wishful thinking to believe that these loyalty oath provisions would deter any member of a subversive organization from applying for benefits under the act, since individuals of this type would have no scruples in perjuring themselves to obtain assistance.

In addition, the requirements of the subsection, in the opinion of the committee, interfere with the operation and objectives of the National Defense Education Act (especially the student loan program) and cast unfounded doubts upon the loyalty of members of the educational community. Moreover, there appear to exist serious questions concerning the constitutionality of this provision.

LEGISLATIVE BACKGROUND

This subsection received very little consideration when it was placed in the National Defense Education Act as a routine administrative provision. It was included among the "Miscellaneous provisions" of the bill when it was reported out of this committee in the 85th Congress. It was not discussed in the legislative reports on the bill, nor during the floor debate in either the Senate or the House of Representatives, except at one point when a clarifying amendment was adopted, without objection, during Senate debate. This amendment merely made the subsection apply specifically to the recipients of loans as well as of payments under the other titles of the bill.

EFFECTIVENESS AS A SECURITY MEASURE

Section 1001(f) was designed to prevent Federal benefits provided under the act from going to subversive individuals. The committee is entirely in sympathy with this purpose, and does not in any way underestimate the threat to the national welfare which Communist and other subversion poses. Nor should the removal of the provision in any way be interpreted as an invitation to disloyal persons to avail themselves of benefits under the act. But it is folly to pretend that this oath and disclaimer provide any protection against subversives.

A card-carrying Communist would scoff at this requirement and willingly sign such an oath without qualms. On the other hand, loyal and sensitive men and women who appreciate our heritage of freedom have resisted the procedure as repugnant, discriminatory, and palpably ineffective.

Both the Department of Health, Education, and Welfare and the Bureau of the Budget, speaking for the administration, have emphasized that the provision is completely ineffectual as a security measure, and witness after witness before the committee stressed this point.

W. R. Davies, president of Wisconsin State College, summed it up in a letter presented at the hearings when he wrote:

> The unnecessary and distasteful loyalty oath should be immediately eliminated. If there are any Communists around, they would be the first to sign such an affidavit.

President A. Whitney Griswold of Yale University stated in a letter of December 19, 1958, to the Honorable Arthur S. Flemming, Secretary of the Department of Health, Education, and Welfare:

> * * * it is hard to understand why anyone should believe such oaths to be efficacious as public safeguards. Far from deterring real transgressors, they offer them a convenient cloak for their intentions and transgressions. In this respect they are worse than futile. They tend to alienate the good will of the loyal citizen without gaining a corresponding advantage in protecting the public against the actions or intentions of the disloyal. They give the public a false sense of security which, if it becomes too literal and too strong, might lead to our undoing.

The committee further believes that the provisions of section 1001 (f), in addition to being ineffectual, are superfluous. In his testimony before the committee, Secretary Flemming declared that the Commissioner of Education would be able to deny funds to persons identified as subversives even if this provision was not contained in the National Defense Education Act.

This point was reaffirmed in the following letter from the Secretary to the acting chairman of the committee's Subcommittee on Education:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
June —, 1959.

Hon. JOHN F. KENNEDY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR KENNEDY: Your letter of June 8, 1959, refers to my testimony before the Subcommittee on Education of the Committee on Labor and Public Welfare on S. 819, a bill to amend the National Defense Education Act of 1958. You ask that I expand upon a paragraph which appears on page 85 of the record of the hearings to the effect that even without section 1001 (f) of the National Defense Education Act, it would be possible to deny funds to a person who belongs to or supports an organization which advocates the overthrow of the U.S. Government.

* * * * * * *

None of the titles in the act prescribes specific conditions for Federal payments which if met confer a right to selection. Instead, the act leaves to those responsible for selection the development and application of reasonable standards of selection which are consistent with the purposes of the act as a whole, and of a particular program involved. For example, the act at no point specifically requires that a person selected for student aid be of good moral character; yet, it would scarcely be maintained that there is no authority to refuse stipends or loans when it is apparent that an applicant fails to meet a reasonable standard in this area.

By the same reasoning, persons administering the National Defense Education Act clearly have the right to deny funds to a person who belongs to or supports an organization which advocates the overthrow of the U.S. Government.

Sincerely yours,

ARTHUR S. FLEMMING, *Secretary.*

Experience with other statutes, such as the National Labor Relations Act, has demonstrated that non-Communist oath requirements are not an effective instrument for discovering and prosecuting subversive elements. There have been no prosecutions under a similar provision in the National Science Foundation Act during the 9 years of its existence.

INTERFERENCE WITH OPERATION AND OBJECTIVES OF THE NATIONAL DEFENSE EDUCATION ACT

The first sentence of the act states that—

> the Congress hereby finds and declares that the security of the Nation requires the fullest development of the mental resources and technical skills of its young men and women.

Section 1001(f) has interfered with the attainment of this objective. At least seven colleges and an undetermined number of students in other colleges have refused to participate in the student loan program because of the oath and disclaimer provision.

In explaining why Swarthmore College declined the loan provisions of the act, President Courtney Smith of that institution emphasized the importance of freedom in carrying out the educational objectives of the act. He told the subcommittee:

> As an educational institution Swarthmore College believes that strong citizens in a democratic society are produced in an atmosphere of freedom where ideas do not need to be forbidden or protected. The college has confidence in its students and in the educational process itself, confidence in the efficacy of free inquiry and debate to reveal error.
>
> Section 1001(f) is, therefore, in my opinion, contrary to the intent and the spirit of the act as a whole, contrary to anything I know about the proper and effective atmosphere for an institution of learning contrary to traditional American principles.

SECTION 1001(f) CASTS DOUBT UPON THE LOYALTY OF THE MEMBERS OF THE EDUCATIONAL COMMUNITY

The committee cannot help but sympathize with the objections raised by the teaching profession against the implications contained in the requirements of section 1001(f). These objections were summarized in a letter sent to each of the committee members by the American Association of University Professors:

> The disclaimer requirement or "test oath" by its nature cannot fail to be invidious. If an individual refuses to sign, it raises a question that he is unworthy of public trust or benefit. If he signs, he endorses the pertinency of the general

> suspicion about him and his kind which is embodied in the requirement. Social safeguards should be directed to specific dangers; they should not, as in this instance, take the form of inescapable and unwarranted derogatory implications directed toward a whole class of persons and all its members.

President Nathan M. Pusey of Harvard University, in a letter to the acting chairman of the subcommittee, drew attention to the central reason that makes the requirement so unpalatable to college administrators, faculties and students, when he stated:

> The Congress has singled out college people alone as a special group and then said to them by implication, "We are not sure you are fine loyal Americans. As a matter of fact, we rather think you are not." Such an implication is utterly unfair to those same young people on whom the future of the country so largely depends, and who in event of war would, of course, as fliers, soldiers, sailors, and marines, have to carry more than a full share of the responsibility for our national safety.

QUESTIONS OF CONSTITUTIONALITY

Substantial testimony was presented to the committee concerning the unconstitutionality of section 1001(f), on the ground that it is vague and indefinite to such a degree that it offends the due process clause of the fifth amendment.

Indefiniteness in a criminal statute has long been recognized as a grounds for declaring it void (*United States* v. *Reese* (1875), 92 U.S. 215). The U.S. Supreme Court stated in *Winters* v. *New York* ((1948) 333 U.S. 501, 515):

> The crime "must be defined with appropriate definiteness" (*Cantwell* v. *Connecticut*, 310 U.S. 296; *Pierce* v. *United States*, 314 U.S. 306, 311). There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment. The vagueness may be from uncertainty in regard to persons within the scope of the act (*Lanzetta* v. *New Jersey*, 306 U.S. 451) or in regard to the applicable tests to ascertain guilt.

It was pointed out to the committee during the hearings that person required to execute a disclaimer affidavit is given no guidance as to the organizations which might be included within the language of the subsection nor of the type of "support" to such organizations which he must disclaim.

References were also made to the Supreme Court's decision in *Wieman* v. *Updegraff* ((1952) 344 U.S. 183), which struck down an Oklahoma loyalty oath for State employees. The Court held this provision unconstitutional because it excluded persons from public employment solely on the basis of organizational membership, without regard to their knowledge of the character of the organizations to which they belonged.

While the committee does not pass judgment upon these points of view, it feels that the constitutional issues raised are serious enough to question the wisdom of retaining section 1001(f) in the act.

CONSIDERATION OF ALTERNATIVES TO SECTION 1001 (f)

The committee considered the advisability of adopting a substitute provision for section 1001(f) under which persons with subversive affiliations who receive benefits under the act might be prosecuted. For reasons similar to those which were considered in relation to the present language of the subsection, it was felt that such a provision was neither necessary nor desirable.

The committee is of the opinion that such a penalty provision would be no more effectual in preventing subversives from obtaining benefits under the act than the disclaimer requirement. Moreover, such a provision is, we believe, unnecessary in view of the present laws under which subversives are subject to prosecution. Secretary Flemming stated on this point at the hearings—

> * * * if a person receiving assistance under this act is identified as a person who is in violation of our internal security laws, he should be prosecuted immediately under the laws designed directly and specifically for such offenses.

Such a penalty provision would also carry the same implication that persons eligible for educational benefits under the act are a particularly suspect group. The committee has been unable to discover any evidence to justify such an inference. Teachers and students would be justified in finding a section of this nature just as offensive as the existing one.

For these reasons, in addition to the difficulties foreseen in interpreting and conducting prosecutions under the several penalty provisions suggested to it, the committee decided against recommending a substitute of this nature.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL DEFENSE EDUCATION ACT OF 1958

* * * * * * *

SECTION 1001. * * *

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[(f) No part of any funds appropriated or otherwise made available for expenditure under authority of this Act shall be used to make payments or loans to any individual unless such individual (1) has executed and filed with the Commissioner an affidavit that he does not believe in, and is not a member of and does not support any organization that believes in or teaches, the overthrow of the United States Government by force or violence or by any illegal or unconstitutional methods, and (2) has taken and subscribed to an oath or affirmation in the following form: "I do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America and will support and defend the Constitution and laws of the United States against all its enemies, foreign and domestic." The provisions of section 1001 of title 18, United States Code, shall be applicable with respect to such affidavits.]

MINORITY VIEWS

We agree with the majority of the committee on the desirability of eliminating section 1001(f) from the National Defense Education Act of 1958. This section requires an affidavit disclaiming a belief in or advocacy of the overthrow of our Federal Government by illegal or unconstitutional means as a condition of receiving any payment or loan under the act. Our agreement is based on a belief that such affidavits are ineffectual to accomplish the purpose for which they are intended, and may create an erroneous public impression that those who are required to execute them are members of a class or category of persons peculiarly guilty of or susceptible to subversion.

However, we do feel that the Federal Government should be given some protection against those few individuals who may procure and enjoy benefits under the act while simultaneously advocating the overthrow of the very Government which provides them with such benefits. We therefore propose to offer or support on the floor of the Senate, amendments, which while superseding the existing affidavit requirement, impose a criminal penalty on any individual who accepts such benefits while advocating the overthrow of our constitutional form of government by illegal means.

BARRY GOLDWATER.
EVERETT MCKINLEY DIRKSEN.
WINSTON L. PROUTY.

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